

Message Text

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PAGE 01 STATE 097368
ORIGIN COME-00

INFO OCT-01 EUR-12 NEA-10 ISO-00 EB-08 TRSE-00 OMB-01
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DRAFTED BY COM/BED/CAGNE/JHEARN:E
APPROVED BY E CA/ D:REDAY
PBHALE/BED/CAGNE
KKNOWLES/AGC/ITA
SJMARCUS/DAS/TR
DMORRISON/NEA/RA/STATE (DRAFT)
-----036238 151907Z /73

R 150345Z APR 78
FM SECSTATE WASHDC
TO AMEMBASSY KUWAIT
INFO AMEMBASSY ABU DHABI
AMCONSUL ALEXANDRIA
AMEMBASSY AMMAN
AMEMBASSY ATHENS
USINT BAGHDAD
AMEMBASSY BEIRUT
AMEMBASSY CAIRO
AMEMBASSY DAMASCUS
AMCONSUL DHAHRAN
AMEMBASSY DOHA
AMEMBASSY JIDDA
AMEMBASSY MANAMA
AMEMBASSY MUSCAT
AMEMBASSY SANA
AMEMBASSY TRIPOLI

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E.O. 11652: N/A

TAGS: PFOR, KU
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SUBJECT: ARAB BOYCOTT: INTERPRETATIONS OF COMMERCE
DEPARTMENT EXPORT ADMINISTRATION ACT (EAA) REGULATIONS

REF: (A) STATE 40439; (B) KUWAIT 958 (NOTAL); (C) KUWAIT
833 (NOTAL); (D) 77 KUWAIT 5776

1. FOLLOWING INTERPRETATIONS OF ISSUES RAISED UNDER COMMERCE'S EAA REGULATIONS IN KUWAIT REFTELS MAY BE DRAWN ON BY POSTS IN ASSISTING INDIVIDUAL U.S. FIRMS WITH PARTICULAR BOYCOTT PROBLEMS AND IN APPROACHES TO HOST GOVERNMENTS TO SEEK BROAD-BASED ADOPTION OF PRACTICES

CONSISTENT WITH EAA REGS. IN DEALINGS WITH HOST GOVERNMENTS, POSTS SHOULD NOT SUGGEST OR PROPOSE USE OF SUBSTITUTE BOYCOTT LANGUAGE EVEN OF TYPE WITH WHICH COMPLIANCE IS PERMITTED BY EAA REGS (SEE GUIDANCE REF(A)).

2. REF (B) REPORTED OPINION OF PRIVATE COMPANY REP THAT: (1) U.S. FIRM COULD NOT SUGGEST ALTERNATIVE LANGUAGE TO OFFENDING BOYCOTT CONDITION; AND (2) AGREEING THAT "THE LAWS OF KUWAIT SHALL APPLY TO THE CONSTRUCTION, VALIDITY, AND PERFORMANCE OF THIS AGREEMENT" (GOVERNING LAW CLAUSE) IS NOT PERMITTED UNDER EAA REGS. TO THE CONTRARY, IT IS

PERMISSIBLE FOR U.S. FIRM TO NEGOTIATE FOR AMENDMENT OR DELETION OF OFFENDING BOYCOTT CONDITIONS AND TO SIGN CONTRACT IF NEGOTIATIONS SUCCEED IN ELIMINATING CLAUSES WHICH CONFLICT WITH PROHIBITIONS IN THE REGULATIONS. SEE IN THIS REGARD SEC. 369.2(A), EXAMPLE 1 (ROMAN) UNDER AGREEMENTS TO REFUSE TO DO BUSINESS. FIRMS SHOULD BE AWARE, OF COURSE, THAT IT IS CONTRARY TO LAW FOR U.S. PERSON TO GIVE ORAL COMMITMENT TO RESPECT BOYCOTT CONDITIONAL OFFICIAL USE

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TIONS IN ORDER TO GET OFFENDING LANGUAGE DROPPED FROM DOCUMENTATION.

3. ALSO, U.S. FIRM MAY AGREE TO COMPLY WITH A COUNTRY'S LAWS GENERALLY (WHERE THERE ARE NO SPECIFIC REFERENCES TO BOYCOTT LAWS) OR THAT A COUNTRY'S LAWS SHALL GOVERN THE CONTRACT. SEE SEC 369.2(A), EXAMPLES 3 AND 4 (ROMAN) UNDER AGREEMENTS TO REFUSE TO DO BUSINESS. GOVERNING LAW CLAUSE IS PREFERABLE TO AGREEMENT TO COMPLY WITH COUNTRY'S LAWS GENERALLY BECAUSE OF IMPLICATIONS FOR LATTER UNDER TAX LAW GUIDELINES. IT MUST BE STRESSED, HOWEVER, THAT WHILE U.S. FIRMS MAY AGREE TO SUCH CONDITIONS, THEY MUST CONFORM THEIR ACTIVITIES TO THE LAW AND EAA REGULATIONS IN CARRYING OUT THE CONTRACT.

4. IT IS PERMISSIBLE UNDER EAA REGULATIONS FOR U.S. FIRM TO CERTIFY THAT IT IS NOT ITSELF BLACKLISTED (AND IT MAY OBTAIN SUCH CERTIFICATION FROM BOYCOTT OFFICE). AFTER JUNE 21, 1978, HOWEVER, IT MAY NOT CERTIFY THAT IT IS NOT THE MOTHER OR SISTER COMPANY OF, OR IS NOT AFFILIATED WITH, BLACKLISTED FIRMS. THUS, SO FAR AS U.S. FIRMS CONCERNED, NO PROBLEM RAISED UNDER EAA REGULATIONS

IF KUWAITI FIRM OR MINISTRY OBTAINS CERTIFICATE OF NON-BLACKLIST STATUS OF U.S. FIRM FROM KUWAIT BOYCOTT OFFICE. NEVERLESS, FOR REASONS CITED REF (A), IT IS IN U.S. INTEREST THAT U.S. FIRMS THEMSELVES NOT BE CONFRONTED WITH REQUIREMENT TO PROVIDE CERTIFICATE OF NON-BLACKLIST STATUS.

5. RE QUESTION RAISED PARA 6(B) REF (D), IT IS PERMISSIBLE FOR U.S. PERSON TO AGREE TO PRIMARY BOYCOTT CONDITION PROHIBITING SHIPMENT OF GOODS OF BOYCOTTED COUNTRY ORIGIN TO A BOYCOTTING COUNTRY (E.G., CONDITION PROHIBITING SHIPMENT TO KUWAIT OF GOODS OF ISRAEL, SOUTH AFRICA, OR RHODESIA ORIGIN). ABOVE APPLIES WHETHER CONDITION APPEARS IN TENDER, CONTRACT, OR LETTER OF CREDIT. U.S. LIMITED OFFICIAL USE

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PERSON MAY NOT CERTIFY TO THAT EFFECT AS PART OF SHIPPING DOCUMENTATION, HOWEVER, AFTER JUNE 21, 1978. AGAIN, PER REF (A), POSTS MAY NOT PROPOSE USE THIS CONDITION AS

SUBSTITUTE FOR NEGATIVE CERTIFICATE OF ORIGIN REQUIREMENT BUT SHOULD CONTINUE TO ENCOURAGE "CLEAN DOCUMENT" APPROACH. DESIRED ALTERNATIVE, OF COURSE, IS GENERAL ADOPTION OF POSITIVE CERTIFICATE OF ORIGIN, WHICH OBVIATES NEED FOR SUCH CONDITION. CHRISTOPHER

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Message Attributes

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